

Introduced by Senator BenoitFebruary 26, 2009

An act to amend Section 511 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 404, as introduced, Benoit. Alternative workweek.

Existing law requires that an alternative workweek schedule proposed by an employer may be adopted through a $\frac{2}{3}$ majority vote of the employees in a secret ballot. It also requires, among other things, that an employer report to the Division of Labor Statistics and Research within the Department of Industrial Relations the results of an election to establish an alternative workweek within 30 days of the election.

This bill would change the time limit for an employer to report the results of an alternative workweek election to an indeterminate number of days following the election.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 511 of the Labor Code is amended to
- 2 read:
- 3 511. (a) Upon the proposal of an employer, the employees of
- 4 an employer may adopt a regularly scheduled alternative workweek
- 5 that authorizes work by the affected employees for no longer than
- 6 10 hours per day within a 40-hour workweek without the payment
- 7 to the affected employees of an overtime rate of compensation
- 8 pursuant to this section. A proposal to adopt an alternative

1 workweek schedule shall be deemed adopted only if it receives
2 approval in a secret ballot election by at least two-thirds of affected
3 employees in a work unit. The regularly scheduled alternative
4 workweek proposed by an employer for adoption by employees
5 may be a single work schedule that would become the standard
6 schedule for workers in the work unit, or a menu of work schedule
7 options, from which each employee in the unit would be entitled
8 to choose.

9 (b) An affected employee working longer than eight hours, but
10 not more than 12 hours in a day ~~pursuant to~~, *under* an alternative
11 workweek schedule adopted pursuant to this section, shall be paid
12 an overtime rate of compensation of no less than one and one-half
13 times the regular rate of pay of the employee for any work in excess
14 of the regularly scheduled hours established by the alternative
15 workweek agreement and for any work in excess of 40 hours per
16 week. An overtime rate of compensation of no less than ~~double~~
17 *two times* the regular rate of pay of the employee shall be paid for
18 ~~any~~ work in excess of 12 hours per day and ~~for any~~ work in excess
19 of eight hours on those days worked beyond the regularly scheduled
20 workdays established by the alternative workweek agreement.
21 ~~Nothing in this~~ *This section requires does not require* an employer
22 to combine more than one rate of overtime compensation in order
23 to calculate the amount to be paid to an employee for ~~any hour of~~
24 overtime work.

25 (c) An employer shall not reduce an employee's regular rate of
26 hourly pay as a result of the adoption, repeal or nullification of an
27 alternative workweek schedule.

28 (d) An employer shall make a reasonable effort to find a work
29 schedule not to exceed eight hours in a workday, in order to
30 accommodate any affected employee who was eligible to vote in
31 an election authorized by this section and who is unable to work
32 the alternative schedule hours established as the result of that
33 election. An employer shall be permitted to provide a work
34 schedule not to exceed eight hours in a workday to accommodate
35 any employee who was hired after the date of the election and who
36 is unable to work the alternative schedule established as the result
37 of that election. An employer shall explore any available reasonable
38 alternative means of accommodating the religious belief or
39 observance of an affected employee that conflicts with an adopted

1 alternative workweek schedule, in the manner provided by
2 subdivision (j) of Section 12940 of the Government Code.

3 (e) The results of any election conducted pursuant to this section
4 shall be reported by an employer to the Division of Labor Statistics
5 and Research within ~~30~~ ____ days after the results are final.

6 (f) ~~Any~~ A type of alternative workweek schedule that is
7 authorized by this code and that was in effect on January 1, 2000,
8 may be repealed by the affected employees pursuant to this section.

9 ~~Any~~ An alternative workweek schedule that was adopted pursuant
10 to Wage Order ~~Numbers~~ *Number* 1, 4, 5, 7, or 9 of the Industrial
11 Welfare Commission is null and void, except for an alternative
12 workweek providing for a regular schedule of no more than 10
13 hours' work in a workday that was adopted by a two-thirds vote
14 of affected employees in a secret ballot election pursuant to wage
15 orders of the Industrial Welfare Commission in effect prior to
16 1998. This subdivision does not apply to exemptions authorized
17 pursuant to Section 515.

18 (g) Notwithstanding subdivision (f), an alternative workweek
19 schedule in the health care industry adopted by a two-thirds vote
20 of affected employees in a secret ballot election pursuant to Wage
21 Orders 4 and 5 in effect prior to 1998 that provided for workdays
22 exceeding 10 hours but not exceeding 12 hours in a day without
23 the payment of overtime compensation shall be valid until July 1,
24 2000. An employer in the health care industry shall make a
25 reasonable effort to accommodate ~~any~~ *an* employee in the health
26 care industry who is unable to work the alternative schedule
27 established as the result of a valid election held in accordance with
28 provisions of Wage ~~Orders~~ *Order* 4 or 5 that were in effect prior
29 to 1998.

30 (h) Notwithstanding subdivision (f), if an employee is
31 voluntarily working an alternative workweek schedule providing
32 for a regular work schedule of ~~not~~ *no* more than 10 hours *of* work
33 in a workday as of July 1, 1999, an employee may continue to
34 work that alternative workweek schedule without the entitlement
35 of the payment of daily overtime compensation for the hours
36 provided in that schedule if the employer approves a written request
37 of the employee to work that schedule.